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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,051	02/05/2002	Mark R. Moore	59428.0114	8357

7590 01/08/2003
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EXAMINER

MAMMEN, NATHAN SCOTT

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 01/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/068,051

Applicant(s)

MOORE, MARK R.

Examiner

Nathan S Mammen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 39-53 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 39-53 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 39-53 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,370,854. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between the conflicting claims is at most an obvious recombination of parts of the same invention.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 45 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 45 recites in the preamble "The dolly" and then sets forth limitations that the line trimmer includes a guard member. From the specification, it appears that the invention does not

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conceive that the guard member is a part of the dolly. Claim 45 is indefinite, since its limitations appear to be contrary to the disclosure of the instant invention.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 39-44, 46, 48, 49, 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lowry et al. (U.S. Patent 4,389,836) in view of Clark (U.S. Patent 2,942,397) or, alternatively, Clark (U.S. Patent 2,942,397) in view of Lowry (U.S. Patent 4,389,836), both references cited by Applicant.

The Lowry '836 patent discloses a dolly for a line trimming apparatus, including a coupling portion for connecting the dolly to the line trimming apparatus. What the Lowry '836 patent does not disclose is that the dolly has five wheel receptacles for supporting the line trimming apparatus in a mower, trimmer and edger configurations.

The Clark '397 patent discloses that it is known in the art to provide a mower with six wheel receptacles for supporting the mower in a mowing (fig. 1), trimming and edger (fig. 7) configurations.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the dolly of the Lowry '836 patent with the wheel receptacles of the Clark '397 patent, in order to provide a dolly that can support a line trimmer in mowing, trimming and edging positions. Alternatively, it would have been obvious to provide the mower

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frame of the Clark '397 patent with a line trimmer and a coupling portion for a line trimmer as disclosed by the Lowry '836 patent, in order to provide an alternative cutting means that incorporates the portability and versatility of a line trimmer with the stability and ease of a dolly.

Regarding claims 40-42: The wheel mounting brackets of the Clark '397 patent include cooperating locks (fig. 7) for releasably retaining the selected wheel mounting brackets in selected wheel receptacles. The first (15- rear) and second (15- front) wheel receptacles form a first pair of wheel receptacles projecting in opposite directions from each other. The fourth and fifth wheel receptacles (14) form a second pair of wheel receptacles and extend substantially parallel to each other and in a direction generally normal to the first pair of wheel receptacles. The first pair of wheel receptacles and the third wheel receptacle support the line trimming apparatus by three support wheels in a tricycle configuration (fig. 1).

Regarding claims 43, 44: The Lowry '836 patent discloses that the coupling includes a plurality of circumferentially spaced tabs (66) on the dolly cooperating with corresponding tabs (62) on the line trimming apparatus for receiving the line trimming apparatus in a twist and lock coupling. In the absence of structural limitation or definition for "resiliently deformable", the tabs (66) are considered to have an inherent resiliency. The tabs (66) on the dolly cooperate with the tabs (62) on the line trimming apparatus to releasably lock the line trimming apparatus to the dolly.

Regarding claims 46: The Clark '397 patent discloses that the wheel receptacles are configured for receiving the wheel mounting brackets in plural positions to selectively vary the cutting height of the line trimming apparatus.

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Regarding claims 48, 49: The Clark '397 patent discloses that at least selected ones of the wheel mounting bracket include a stub axle (fig. 7) and a bracket flange (fig. 7) projecting therefrom for supporting a wheel bolt for connecting a wheel to the wheel mounting bracket. The axis of the wheel bolt extends parallel to and is spaced from the stub axle.

7. Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lowry et al. (U.S. Patent 4,389,836) in view of Clark (U.S. Patent 2,942,397) as applied to claim 39 above, and further in view of Moore (U.S. Patent 4,796,415), all references cited by Applicant.

The combination of the Lowry '836 and Clark '397 patents discloses the claimed invention, as stated in paragraph 6 above, except for the dolly including a brace extending from the dolly frame for engagement with a shaft of the line trimming apparatus. The Moore '415 patent teaches that it is known in the art to provide a brace (82). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the dolly of the combination of the Lowry '836 and Clark '397 patents with the brace disclosed by the Moore '417 patent, in order to provide stabilization to the line trimming apparatus shaft.

8. Claim 45, 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lowry et al. (U.S. Patent 4,389,836) in view of Clark (U.S. Patent 2,942,397) as applied to claims 39 and 44 above, and further in view of Pittinger, Sr. et al (U.S. Patent 4,125,339).

The combination of the Lowry '836 and Clark '397 patents discloses the claimed invention, as stated in paragraph 6 above, except for the line trimming apparatus also having a generally planar guard member having an opening for the line trimming apparatus and being releasably engaged with the line trimming apparatus through corresponding tabs. The Pittinger '339 patent teaches that it is known in the art to provide a line trimming apparatus with a guard

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removably attached by tabs. It would have been obvious to provide the line trimming apparatus of the combination of the Lowry '836 and Clark '397 patents with the guard of the Pittinger '339 patent, in order to provide safety when the line trimming apparatus is used independently of the dolly.

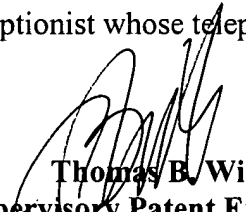
Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Mammen whose telephone number is (703) 306-5959. The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at (703) 308-3870. The fax number for this Group is (703) 305-3579.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-1113.


Thomas B. Will
Supervisory Patent Examiner
Group 3600

NSM
1/4/03

Nathan S. Mammen